

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BEAR, LLC, a Minnesota limited
liability company,
Plaintiff,

v.

MARINE GROUP BOAT WORKS,
LLC, a California limited liability
company; UNIVERSAL STEEL
FABRICATION, INC., a California
corporation,
Defendant.

Case No.: 3:14-cv-2960-BTM-
BLM

**ORDER DENYING PLAINTIFF'S
MOTION TO CONSOLIDATE**

CERTAIN INTERESTED
UNDERWRITERS AT LLOYD'S,
LONDON,
Plaintiff,
v.
BEAR, LLC,
Defendant.

Case No.: 3:15-cv-00630-BTM-
BLM

Before the Court are several pending motions in related cases *Bear, LLC v. Marine Group Boat Works, LLC*, No. 14-cv-2960-BTM-BLM (“Liability Action”) and

1 *Certain Interested Underwriters at Lloyd's, London v. Bear, LLC*, No. 15-cv-0630-
 2 BTM-BLM ("Coverage Action"). This order deals only with Plaintiff/Counter-
 3 Defendant Bear LLC's ("Bear") (Liability Action) motion to consolidate these cases.

4 On July 22, 2016, Bear filed a motion to consolidate. (Liability Action, Dkt.
 5 70). Defendant/Counter-Plaintiff, Marine Group Boat Works, LLC ("MGBW")
 6 (Liability Action), and Plaintiff/Counter-Defendant, Certain Interested Underwriters
 7 at Lloyd's, London ("Underwriters") (Coverage Action), each filed oppositions.
 8 (Liability Action, Dkt. 80; Coverage Action, Dkt. 73). Third-Party Defendant, Marsh
 9 USA, Inc. ("Marsh") (Coverage Action), filed a response in support of Bear's
 10 motion. (Coverage Action, Dkt. 74). For the reasons discussed below, Bear's
 11 motion to consolidate is **DENIED**.

12 **I. BACKGROUND**

13 Both actions arise out of the same incident. In May 2014, Bear's 102-foot
 14 motor vessel ("the *Polar Bear*") ran aground at the entrance to the San Diego
 15 Harbor, damaging the bottom of the hull. (Liability Action, Dkt. No. 1). On June
 16 19, 2014, the *Polar Bear* caught fire while undergoing repairs at MGBW's
 17 boatyard. *Id.* The fire resulted in *Polar Bear*'s total loss. *Id.*

18 **A. The Liability Action**

19 In December 2014, Bear filed suit against MGBW and Universal Steel
 20 Fabrication, Inc.,¹ seeking to establish liability for the *Polar Bear*. *Id.* In February
 21 2015, MGBW filed a Counterclaim against Bear, specifically alleging that Bear's
 22 claims are barred by the written contract they entered into on May 7, 2014.
 23 (Liability Action, Dkt. No. 8).

24 **B. The Coverage Action**

25 In March 2015, Underwriters—Bear's insurer—brought a declaratory relief
 26
 27

28 ¹ Universal Steel Fabrication has not made an appearance in the case.

1 action against Bear, seeking to establish that it justifiably denied coverage as a
 2 result of Bear's alleged failure to satisfy certain conditions precedent under the
 3 insurance policy. (Coverage Action, Dkt. No. 1). In June 2015, Bear filed a
 4 Counterclaim against Underwriters alleging that it denied coverage in bad faith,
 5 and a Third-Part Complaint against Marsh—Bear's insurance broker—claiming a
 6 breach of duty in placing the insurance. (Coverage Action, Dkt. No. 8).

7 **II. DISCUSSION**

8 **A. Legal Standard**

9 Rule 42(a) of the Federal Rules of Civil Procedure allows a district court to
 10 consolidate cases when actions before it involve a "common question of law or
 11 fact." Fed. R. Civ. P. 42(a). District courts have broad discretion to grant or deny
 12 consolidation. *Investors Research Co. v. United States Dist. Court for Cent.*
 13 *Dist.*, 877 F.2d 777, 777 (9th Cir. 1989). In determining whether consolidation is
 14 appropriate, a court "weighs the saving of time and effort that consolidation would
 15 produce against any inconvenience, delay, or expense that it would cause."
 16 *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984). Therefore, even
 17 where a common question exists, consolidation is inappropriate if "it leads to
 18 inefficiency, inconvenience, or unfair prejudice to a party." *EEOC v. HBE Corp.*,
 19 135 F.3d 543, 551 (8th Cir. 1998).

20 **B. Analysis**

21 Bear argues that consolidation is appropriate in this instance because both
 22 the Liability Action and Coverage Action share common questions of fact and
 23 law, namely, that they arise out of the same occurrence—the total loss of the
 24 *Polar Bear*. (Liability Action, Dkt. No. 70 at 1). Both MGBW and Underwriters
 25 argue that the controlling questions of fact and law in these cases are entirely
 26 different, and as such, consolidation would be prejudicial and not in the interest
 27 of judicial economy. (Liability Action, Dkt. 80 at 3; Coverage Action, Dkt. 73 at 4–
 28 5). While Bear is correct in noting that predominance of common issues is not a

1 requirement under Rule 42(a), the Court nevertheless finds that consolidation is
2 not warranted.

3 The controlling legal questions in the Liability Action are the cause of the
4 fire, the seaworthiness of the *Polar Bear*, the enforceability of the “Red Letter”
5 clause and “waiver of subrogation” provision, and the fair market value of the
6 yacht, among others. On the other hand, the main issue concerning the
7 Coverage Action is whether Underwriters justifiably denied coverage on the basis
8 of the insurance policy’s conditions precedent. Given how distinct the legal
9 issues are, and that none of the common factual issues are dispositive, trying
10 these issues together would be inefficient. As already noted, it remains within
11 the Court’s discretion to deny consolidation if it will lead to inefficiency or
12 inconvenience. See *EEOC v. HBE Corp.*, 135 F.3d at 551. Bear repeatedly
13 emphasizes that it seeks to consolidate trials on issues common to the related
14 cases only. (Liability Action, Dkt. 81 at 2). However, the efficiencies gained from
15 consolidating the narrow issues common to both actions do not outweigh the
16 increased burden the Court would incur from essentially holding three separate
17 trials². Even the trial of common issues would become more cumbersome with
18 the participation of all four parties³.

19 Moreover, at this stage of litigation, with both cases approaching the end of
20 discovery, the efficiency gains that ordinarily result from consolidation are no
21 longer available. See *In re Oreck Corp. Halo Vacuum*, No. CV12-949, 2012 WL
22 1340128, at *4 (C.D. Cal. April 17, 2012) (“[C]onsolidation serves the interests of
23 judicial economy by promoting efficiency and saving time for purposes of *pretrial*
24 *discovery* and motion practice.”) (emphasis added). In fact, as Underwriters and
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26
27 ² Bear urges the Court to try the common issues and then to phase the trial of separate issues by resolving the
28 Liability Action first, followed by the Coverage Action.

³ For instance, all four parties would submit pretrial motions, present opening statements, offer evidence, conduct
cross-examination of witnesses, and present closing arguments.

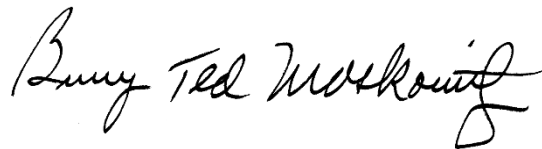
1 MGBW have expressed in their papers, consolidation would likely lead to
2 requests to re-open discovery, further delaying both matters. Finally, because
3 both cases are before the Court, there is no risk of inconsistent adjudications.

4 **III. CONCLUSION**

5 For the reasons discussed above, Bear's motion to consolidate (Liability
6 Action, Dkt. No. 70; Coverage Action, Dkt. No. 69) is **DENIED**. However, this
7 denial is without prejudice. The pretrial conferences shall be held at the same
8 time. If the Court then determines that there is one or more common issues of
9 fact that could be efficiently tried in a consolidated proceeding, the Court will give
10 serious consideration to doing so.

11
12 **IT IS SO ORDERED.**

13 Dated: September 23, 2016



Barry Ted Moskowitz, Chief Judge
United States District Court